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OCT 12 2017

CLERK U.S. BANKRUPTCY COURT  
Central District of California  
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**NOT FOR PUBLICATION**

**UNITED STATES BANKRUPTCY COURT  
CENTRAL DISTRICT OF CALIFORNIA  
LOS ANGELES DIVISION**

In re:

MARTHA NERI and WILLIAM NERI,  
Debtors.

Case No. 2:17-bk-10442-RK

Chapter 7

**ORDER DENYING DEBTORS' MOTION TO  
VACATE DISCHARGE ORDER FOR THE  
LIMITED PURPOSE OF FILING A  
REAFFIRMATION AGREEMENT**

Pending before this court is Debtors' Motion to Vacate Discharge Order for the Limited Purposes of Filing a Reaffirmation Agreement ("Motion") (Docket No. 36) filed on August 8, 2017. David R. Haberbush and Lane K. Bogard, of the law firm of Haberbush & Associates, LLP, represent Debtors. The Motion was not noticed for hearing pursuant to Local Bankruptcy Rule 9013-1(o). No opposition was filed in response to the Motion.

Having considered the Motion, the court denies it based on the following reasons.

First, entry of the discharge by the court was no clerical error. The Motion seeks to vacate the discharge based on Federal Rule of Civil Procedure 60(b) which allows

1 the court to relieve a party of an order for several reasons including “mistake,  
2 inadvertence, surprise, or excusable neglect” or “any reasons that justifies relief.” On  
3 April 24, 2017, Debtors filed a Motion to Extend the Deadline to file Reaffirmation  
4 Agreements (“Motion to Extend”) (Docket No. 18). Debtors’ believe that because the  
5 Motion to Extend was filed before the discharge was entered, the entered discharge  
6 was a clerical error. As noted in the court’s Order Denying Debtors’ Motion to Extend  
7 the Deadline to File Reaffirmation Agreements and Extend the Deadline to File  
8 Reaffirmation Agreements to June 24, 2017 (Docket No. 27), Debtors’ Motion to Extend  
9 did not ask to defer the entry of the discharge under Federal Rule of Bankruptcy  
10 Procedure 4004(c), which they apparently should have. See 4 March, Ahart and  
11 Shapiro, *California Practice Guide: Bankruptcy*, 22:1918 at 22-237 (2016), *citing* Fed. R.  
12 Bankr. P. 4004(c) and Adv. Comm. Note thereto (“**PRACTICE POINTER:** If a  
13 reaffirmation agreement cannot be reached prior to discharge, ask the court to *defer*  
14 *entry of the discharge order* for 30 days.”) (emphasis in original). Since Debtors did not  
15 have a pending request to defer entry of the discharge pursuant to Federal Rule of  
16 Bankruptcy Procedure 4004(c), the discharge was granted by the court in due course in  
17 this case, and thus, when the court entered an order granting Debtors’ discharge on  
18 May 1, 2017 (Docket No. 20), it was not an error.

19 Second, there is no evidence that Debtors “made” or reached a reaffirmation  
20 agreement before the court entered the discharge as required by 11 U.S.C. § 524(c)(1).  
21 Pursuant to 11 U.S.C. § 524(c)(1), an agreement between a holder of a claim and the  
22 debtor, the consideration of which, in whole or in part, is based on a debt that is  
23 dischargeable in a case under this title is enforceable only if such agreement *was made*  
24 *before the granting of the discharge* under 11 U.S.C. § 727. See 11 U.S.C. § 524(c)(1)  
25 (emphasis added); see also, *In re Kamps*, 217 B.R. 836, 843 (Bankr. C.D. Cal 1998)  
26 (citation omitted); 4 March, Ahart and Shapiro, *California Practice Guide: Bankruptcy*, ¶  
27 22:1916 at 22-237, *citing inter alia*, 11 U.S.C. § 524(c)(1), *In re Motley*, 268 B.R. 237,  
28 243 (Bankr. C.D. Cal. 2001) and *In re Kamps*, *supra*. The time for making a

1 reaffirmation agreement under 11 U.S.C. § 524(c)(1) expired on May 1, 2017 when the  
2 court granted Debtors' discharge. Debtor's Motion submitted a copy of a draft  
3 reaffirmation agreement signed by Debtors on April 24, 2017, but it was not signed by  
4 the creditor, JP Morgan Chase Bank, which indicates that the reaffirmation agreement  
5 was incomplete as of the granting of the discharge on May 1, 2017, and therefore, any  
6 reaffirmation agreement made after that date is unenforceable under 11 U.S.C. §  
7 524(c). Motion, Exhibit 2; *see also*, 4 March, Ahart and Shapiro, *California Practice*  
8 *Guide: Bankruptcy*, ¶ 22:1916 at 22-237, *citing inter alia*, 11 U.S.C. § 524(c)(1) and  
9 *Matter of Kinion*, 207 F.3d 751, 756 (5<sup>th</sup> Cir. 2000)(reaffirmation agreement that was  
10 incomplete before granting of discharge and not accompanied by required declaration of  
11 debtors' counsel was unenforceable).

12 Debtors do not cite any legal authority to vacate or revoke a discharge for the  
13 purpose of allowing the Debtors to enter into a reaffirmation agreement other than a  
14 bare citation to Federal Rule of Civil Procedure 60(b), and specifically, they cite no  
15 authority under the Bankruptcy Code and case law interpreting the Bankruptcy Code for  
16 such relief. It is this court's view that it lacks legal authority to vacate or revoke a  
17 discharge for the purpose advanced by Debtors in the Motion to permit them to make a  
18 late reaffirmation agreement because this would be outside of what is permitted under  
19 the Bankruptcy Code in 11 U.S.C. §§ 524(c) and 727(d). *See In re Markovich*, 207 B.R.  
20 909, 912-913 (9<sup>th</sup> Cir. BAP 1997)(a bankruptcy court does "not have inherent equitable  
21 power to revoke a discharge outside the framework of [11 U.S.C.] § 727(d)"). As this  
22 court has observed in another case, "the weight of the case law authority is that the  
23 bankruptcy courts do not have the equitable power to vacate a discharge to allow  
24 debtors to entered into reaffirmation agreements because this would be inconsistent  
25 with the statutory deadline that reaffirmation agreements must be made before entry of  
26 discharge set forth in 11 U.S.C. § 524(c)(1)." *In re Mi Jung Hong*, No. 2:11-bk-39687,  
27 2014 WL 465562 at \*1 and \*4 (Bankr.C.D. Cal., memorandum decision filed and  
28 entered on February 5, 2014) (Kwan, J.), *citing inter alia*, *In re Markovich*, *supra*; *In re*

1 *Eccleston*, 70 B.R. 210, 213-214 (Bankr. N.D.N.Y. 1986)(denying debtor's request to  
2 vacate discharge to enter into reaffirmation agreement based on 11 U.S.C. § 727(d);  
3 *Matter of McQuality*, 5 B.R. 302, 303 (Bankr. S.D. Ohio 1980)(same); *In re Gruber*, 22  
4 B.R. 768, 771 (Bankr. N.D. Ohio 1982)(debtor's request based on Fed. R. Civ. P. 60(b)  
5 denied); *In re Stewart*, 355 B.R. 636, 638-639 (Bankr. N.D. Ohio 2006)(denying debtor's  
6 request where it was based on the court's equitable powers), *citing inter alia*, *In re*  
7 *Bennett*, 298 F.3d 1059, 1067 (9<sup>th</sup> Cir. 2002)("Because reaffirmation agreements are not  
8 favored, strict compliance with [11 U.S.C.] § 524(c) is mandated."); *In re Engles*, 384  
9 B.R. 593, 596-598 (Bankr. N.D. Okla. 2008)(denying debtor's request where it was  
10 based under both Fed. R. Civ. P. 60(b) and equitable grounds); *but see*, *In re Edwards*,  
11 236 B.R. 124, 127-128 (Bankr. D.N.H. 1999) and *In re Solomon*, 15 B.R. 105, 106  
12 (Bankr. E.D. Pa. 1981).

13 The Motion is denied.

14 IT IS SO ORDERED.

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25 Date: October 12, 2017



Robert Kwan  
United States Bankruptcy Judge